

Chairman Getman suggested that the Commission adopt option "c," with the addition of the word "substantial," to clarify the intent of the Commission that the financial effect on the public official must be specific and substantial.

There was no objection from the Commission.

Mr. Wallace stated that the proposal would be brought back to the Commission in November.

Ms. Wooldridge clarified that staff would be treating leaseholds unlike ownership of real property, but dealing with long-term leasehold interests more like ownership of real property.

Enforcement Division Chief Cy Rickards cautioned that the placement of the word "substantial" could require that numbers be considered, and urged that the Commission listen to the people who are regulated to find language that will achieve clarity. He agreed that the proposed amendment could result in stricter rules, but noted that situations where the rules might have to be interpreted more strictly may not occur very often. Enforcement Division drafted option "c", he stated, and added that it would allow easier enforcement. He noted that both Enforcement Division and the regulated community agreed that it would be better to remove the dollar amounts from the regulation.

Ms. Menchaca agreed with Mr. Rickard's concern about the placement of the word "substantial," and stated that the factors that trigger the analysis needed to be clarified.

Chairman Getman clarified that staff would amend language regarding leaseholds and consideration of adding the word "substantial" in option "c," and return to the Commission with their proposals in November, 2000.

Chairman Getman adjourned the meeting for a break at 10:35 a.m. The meeting reconvened at 10:55 a.m.

Item #8. Pre-Notice Discussion: Manner of Disqualification (Conflicts Project, Phase 2, Project M); Legally Required Participation (Conflicts Project, Phase 2, Project Q).

Staff Counsel Deborah Allison presented these projects, noting that Project M had been tabled earlier in the year when it was discovered that some of its issues overlapped with issues in Project Q. Both projects deal with disclosure requirements when an official has a conflict, she stated. Project M, Ms. Allison noted, deals with the disclosures an official must make when the official abstains from making a governmental decision, and Project Q deals with the disclosures an official must make when participating under the "legally required participation" exemption in a governmental decision.

Project M, Ms. Allison explained, deals with Regulations 18702.1(a)(5), which applies when an official is making a governmental decision, and 18730(b)(10), which applies to designated employees. She noted that 18702.1(a)(5) applies in a public meeting, and

18730(b)(10) applies when a designated official abstains from making a governmental decision because of a conflict.

Ms. Allison explained that the Commission needed to determine whether the disclosures should be mandatory, permissive, or deleted altogether. She noted that the Regulation file gave no information regarding the original purposes for requiring the disclosures. She enumerated some concerns raised by the public, including the need to determine what economic interest triggers a conflict to ensure that public officials are not using the Act in order to avoid participating, and the public's right to know.

Ms. Allison pointed out that the information is reported on the public official's Statement of Economic Interest (SEI), and that if the public official reports the information on the SEI and abstains from participation, they are in full compliance with the Act.

Ms. Allison noted that city attorneys pointed out the difficulties of a mandatory rule, but that there was unanimous support for a permissive rule that would encourage, but not require, disclosure. Public input indicated that most public officials will make the disclosure, she suggested. Ms. Allison stated that the Commission should determine how the disclosure should look, and whether the disclosure should be in the minutes or in writing.

Ms. Allison recommended that the Commission adopt a permissive rule.

Commissioner Swanson stated that she supported a permissive rule, because it would give the public official the opportunity to choose whether to disclose matters of a personal nature.

Commissioner Scott supported the mandatory rule, noting that most people do not see the SEI and do not know what the conflict is. She noted that if the public official discloses the conflict, it might be learned that there was not a conflict. She stated that disclosure might affect the decision and that the public has a right to know why the public official has a conflict. If the public official wants to abstain, she added, they can abstain. If a public official abstains because of a conflict, she noted, disclosure should be mandatory.

Commissioner Swanson stated that the public could ask the public official to explain the conflict.

Commissioner Scott responded that the public official could refuse, and that a vote by the public official on an issue will not be changed later if the public official is not reelected.

Commissioner Deaver noted that he had never heard anyone ask what the nature of a conflict was at a public meeting. He did not think that disclosure should be mandatory.

Commissioner Scott stated that mandatory disclosure is required in corporations and nonprofits, and that a public official should be held to the same standard.

Commissioner Makel responded that disclosure is preferable, but that the question is whether that disclosure should be required under the Political Reform Act. She supported the permissive rule.

Mr. Martello stated that he was concerned that there would be more regulations requiring that the public official step down. He explained that the real problem is that the public official may not know if there is a conflict, and that many of them will not participate because they may have a conflict. He believed that most people will explain the conflict when they do not participate because of a conflict.

Commissioner Deaver congratulated Ms. Allison on her new job. The Commissioners joined in thanking her for her work at the FPPC.

Chairman Getman stated that she was concerned that some public officials use the Political Reform Act to avoid voting on a contentious issue, but that she was also concerned about having enforcement actions against public officials who do not participate, but fail to disclose the conflict in the particular manner the Commission may choose. She added that it would be an inappropriate use of the agency's authority. She would rather see the agency focus on making sure that public officials with a conflict not vote, and that public officials who vote despite a conflict be required to disclose that conflict. She did not support a mandatory rule, and was not sure that a permissive rule belonged in a regulation.

Ms. Allison noted that many persons thought the permissive rule would be a good idea because officials often want to disclose and the permissive rule would encourage it. She suggested that it might be accomplished by a note to the rule.

Commissioner Deaver questioned why the Commission should encourage disclosure. If disclosure is not required, he stated, the encouragement would come from politics.

Commissioner Swanson moved that Regulation 18702.1 and 18730(b)(10) be made permissive. Commissioner Deaver seconded the motion. Commissioner Scott voted no. Commissioners Deaver, Makel and Swanson and Chairman Getman voted aye. The motion carried by a 4-1 vote.

Ms. Allison explained that staff was recommending language for the Commission to consider if they wanted to codify answers to questions that staff answers often, regarding rules governing the conduct of public officials when the official abstains from participating because of a conflict.

Ms. Allison stated that the first question was whether an abstaining official can attend or obtain materials from a closed session of a meeting of a public agency. She noted that the FPPC has embraced the court ruling in the *Los Gatos* opinion that the official who has a conflict cannot attend the closed session.

The second question, Ms. Allison continued, was whether the abstaining public officials can remain in their designated seat, or in the meeting at all, during deliberations, and whether they can be counted for purposes of achieving a quorum. Staff has advised

officials that they may remain in the meeting, but that they cannot be counted for purposes of achieving a quorum. She explained that the League of California Cities requested that language be included in the regulation stating that the regulations do not prohibit local jurisdictions from having rules that require a disqualified official to step down or leave the chambers.

Mr. Martello suggested that the language be worded, "Nothing in this Section shall be construed to prohibit an agency by local rule or the custom from requiring a disqualified member to step down from the dais and/or leave the chambers,"

Commissioner Makel clarified that FPPC advice has always been to allow the public official to remain in their designated seat.

Commissioner Deaver noted that he has seen people step down.

Commissioner Makel stated that the FPPC should leave the rule allowing the official to remain in the designated seat, which would allow local jurisdictions to have a different rule.

Commissioner Deaver suggested that the FPPC should make a rule requiring that the public official step down.

Commissioner Scott agreed that the public official should step down from the dais.

Tom Haas, City Attorney of Walnut Creek, representing the League of California Cities, noted that many agendas have numerous items on the consent calendar, and that requiring public officials to leave the room would substantially lengthen the meeting.

Commissioner Deaver stated that Mr. Haas made a good point.

Ms. Menchaca requested a clarification to the League of California Cities' proposed language. She stated that the proposed language could be construed as authority for local rules, and suggested the addition of, "Nothing in this section shall be construed to prohibit or authorize ..." to make clear that the FPPC is neither requiring nor prohibiting local agencies from adopting their own rules.

Ms. Allison noted that staff was also recommending that 18702.1 include a cross-reference to Regulation 18702.4, which would tell an official that they can represent their own interests if they appear in the same manner as any other member of the general public before their own agency.

There was no objection from the Commission to approving staff's recommendations on decision #2.

Ms. Allison presented Project Q, noting that the Los Angeles City Attorney's Office requested this project. She explained the *Kunec* decision required disclosures but did not fully define how those disclosures should be made.